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May 21, 2001

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Director of Technology Center 3600  
Commissioner for Patents  
Washington, D.C. 20231

Re: **Application Serial No.:** 09/014,076  
**Appellants:** R. Michael McGrady, et al.  
**Title:** Method For Tracking And  
Dispensing Medical Items  
**Docket No.:** D-1056 Div 3

Sir:

Please find enclosed a Petition pursuant to 37 C.F.R. § 1.181 for Withdrawal of Holding of Noncompliance with 37 CFR § 1.192(c) for filing in the above case.

No fee is deemed required. However, the Commissioner is authorized to charge any necessary fee associated with the filing of the Petition, and any other fee due, to Deposit Account 04-1077.

Very truly yours,

Ralph E. Jocke  
Reg. No. 31,029

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I hereby certify that this document and the documents indicated as enclosed herewith are being deposited with the U.S. Postal Service as Express Mail Post Office to addressee in an envelope addressed to Director of Technology Center 3600, Commissioner for Patents, Washington, D.C. 20231 this 21st day of May 2001.

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/014,076 01/27/98 FEDOR

M D-1056

RALPH E JOCKE  
231 SOUTH BROADWAY  
MEDINA OH 44256

PM82/0504

EXAMINER
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BUTLER, M

ART UNIT	PAPER NUMBER
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3651

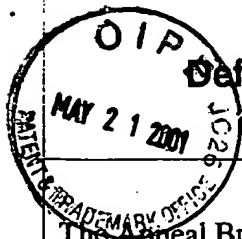
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**



## Defective Appeal Brief

Application No.

09/014,076

Examiner

M. Butler

Applicant(s)

FEDOR ET AL.

Art Unit

3651

—The MAILING DATE of this communication appears on the cover sheet with the correspondence address—

The Appeal Brief filed on 3/09/01 is defective because:

The brief exceeds the 30 page safe harbor brief size limit of Rule 32 (7)(A) of The Federal Rules of Appellate Procedure, FED. R. APP. P. 32 (7)(A); 28 U.S.C. Appendix, as invoked by the Administrative Procedures Act, 5 U.S.C. § 559. Applicant has failed to avail himself of the alternate 1300 line or 14,000 word brief volume limits of Rule 32 (B or C).

### Defective Appeal Brief

1. The appellant's 78 page "Brief" is defective for exceeding the principal brief size limit without receiving special leave from the Board to file an oversized "brief." The Federal Rules (of Appellate Procedure) provide a safe harbor limit for principal briefs of 30 pages. FED. R. APP. P. 32 (7)(A); 28 U.S.C. Appendix. Alternately, appellants may certify brief volume to a maximum of 14,000 words or 1300 lines with a monofaced type. FED. R. APP. P. 32 (7)(B & C); 28 U.S.C. Appendix. As a further alternative, the party may obtain special leave from the adjudicator. FED. R. APP. P. 32, Judicial Advisory Committee Annotations on Rule 32.

The Administrative Procedures Act proscribes that unless a statute on point or an agency promulgated rule on point exists, the [Federal] Rules of Evidence and Procedure apply, 5 U.S.C. § 559. The United States Patent and Trademark Office is an administrative agency within the context of the Administrative Procedures Act. *Dickenson vs. Zurko*, 50 USPQ2d 1930, 1933; 527 U.S. 150 (1999). In his majority opinion, Justice Breyer held that § 559 generates uniform procedural standards among the agencies. *Dickenson vs. Zurko* at 1933; *Id.* at 1935.

By way of example, a rule on point expressly superceding § 559 is the express page limit for briefs filed before the Trademark Trial and Appeal Board. 37 CFR § 2.128(b). Statutes superceding § 559 include other portions of the Administrative Procedures Act such as the standard of review expressly proscribed in 5 U.S.C. § 706 wherein the § 706 standard of review superceded implementation of Rule 52(A) as triggered via § 559. *Dickenson vs. Zurko* at 1932. There is no statutory limit within Titles 35 or 5 of the Code or Title 37 of the Rules on brief size before the Board of Patent Appeals and Interferences. As there is no express rule or statute on point limiting brief size, the 30 page safe harbor limit of Rule 32 applies unless a party is granted permission via special leave from the Board upon exercise of the Board's discretionary authority or unless party elects to certify volume as expressed in word count or line count.

When a party generates an oversized brief, he unduly burdens the adjudicator with excessive analysis and obscures the focus of the issues they need analyze and decide, thereby making the task of the adjudicator (in this instance, the Board) more difficult. As such, a party needs obtain permission from the adjudicator when burdening it with such an extra workload. Since applicant failed to obtain leave from the Board of Patent Appeals and Interferences for the filing of an oversized brief, applicant's 78 page brief is defective.

As noted in the included annotated sections, the Judicial Advisory Committee wrote Rule 32(7) with its 14,000 word/1300 line limitations, toward a goal of proximating Rule 32 in word content with the 50 page limit of old Rule 28(G) of which it was replacing. Rule 28(G) was written at a time when briefs were generated on typewriters.

Since the circuit courts have adopted assorted harsh remedification for exceeding volume content-inclusive of appeal dismissal, attorney sanctions, and consideration of the brief content only through the end of the page limit-the examiner includes as a courtesy to applicant the article warning that briefs certified with MS Word® may give erroneous word counts if the factory default options are not properly deselected-an action held to be inexcusable attorney misrepresentation.

### Conclusion

2. Appellant is required to comply with provisions of 37 CFR 1.192(c) and Rule 32.

To avoid dismissal of the appeal, Appellant must comply within the longest of any of the following TIME PERIODS: (1) ONE MONTH or THIRTY DAYS, whichever is longer, from the mailing of this communication; (2) within the time period for reply to the action from which appeal has been taken; or (3) within two months from the date of the notice of appeal under 37 CFR 1.191. Extensions of these time periods may be granted under 37 CFR 1.136..

3. The applicant has misstated that the PTO has reviewed by cross-checking the disclosures of the parent and grandparent applications against improper insertion of new matter added in the instant case (p15-16). While the examiner does not believe such a misstatement has the effect of giving rise to a defective brief, the examiner points out that the examining corps does not normally cross check the application disclosures of divisional and continuation applications with those from which priority is claimed. Instead the PTO relies upon the applicant's identifying the priority claim link as being a divisional or continuation application rather than a continuation-in-part-application as his attestation that no new matter has been improperly placed into the disclosure of the application under examination. If the applicant has presumptively relied upon the PTO double-checking for the absence of new matter additions in his chain of priority, he should recheck his disclosures and reevaluate whether his positions need be changed.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Exmr. Michael E. Butler whose telephone number is (703) 308-8344.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Ellis, can be reached on (703) 308-2560. The fax number for the Group is (703) 305-7687.

Attachment(s):

☒ Notice of References or Authority Cited, PTO-892

☐ Interview Summary, PTO-413

☐ Other:

CHRISTOPHER P. ELLIS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600

*Michael E. Butler*

MICHAEL E. BUTLER  
PATENT EXAMINER

# Notice of References Cited

Applicant/Patent  
McGrady et al.

Application/Control No.  
09/014,076

Examiner  
Michael E. Butler

Art Unit  
3651

Page 1 of 1

## U.S. PATENT DOCUMENTS

	Document Number Country Code-Number-Kind Code	Date MM-YYYY <sup>1</sup>	Name	Classification <sup>2</sup>
B				
C				
D				
E				
F				
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## FOREIGN PATENT DOCUMENTS

	Document Number Country Code-Number-Kind Code	Date MM-YYYY <sup>1</sup>	Country	Name	Classification <sup>2</sup>
N					
O					
P					
Q					
R					
S					
T					

## NON-PATENT DOCUMENTS

	Include, as applicable: Author, Title, Date, Publisher, Edition or Volume, Pertinent Pages
U	Lea, Graham, Avoid MS Word, US appellate judges warn lawyers, The Register, 2/8/99
V	Federal Rules of Appellate Procedure Rule 32, 28 U.S.C.A. appendix - 2000
W	
X	

\* A copy of this reference is not being furnished with this Office action. See MPEP § 707.05(a).

<sup>1</sup> Dates in MM-YYYY format are publication dates.

<sup>2</sup> Classifications may be U.S. or foreign.

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## Avoid MS Word, US appellate judges warn lawyers

By Graham Lea

Posted: 02/08/1999 at 16:26 GMT

MS Word has been condemned by three US Court of Appeals judges for giving an incorrect word count. Rule 32 of the appeal procedure requires briefs to be no more than 14,000 words (and reply briefs 7000 words), but the hapless party to an otherwise irrelevant case in the Northern District of Illinois was castigated for a false certificate to the court that a brief was 13,824 words long. Rule 32 says that headings, footnotes, quotations etc. count toward the word and line limitations. It turned out there were 15,056 words according to WordPerfect. The faulty product was MS Word 97, which has an option to include footnotes if invoked – except that it is dimmed and cannot be used if any text is selected, so the count is for the number of words excluding footnotes. This is a problem because the corporate disclosure statement, the table of contents, the table of citations, and the like do not count towards the word limit, so selecting text is essential. It's a bug, of course, although we shall probably be told it is a feature. The judges said: "Current versions of Corel WordPerfect (for both Windows and Macintosh platforms) do not have this problem. WordPerfect does what lawyers may suppose that Word does (or should do): it automatically includes footnotes in its word and character counts." The endorsement of WP continued: "Lawyers who produce their documents with WordPerfect software have an easy job of things under Rule 32." So far as the future is concerned, "Long-run solutions to this problem [Ha! Claiming it's a "feature" and not a "problem" could be contempt of court] must come either from Microsoft Corporation – which ought to make it possible to obtain a count of words in footnotes attached to a selected text... We will send copies of this Opinion to those responsible... flag this issue in the court's Practitioner's Guide... law firms should alert their staffs to the issue... our clerk's office will spot-check briefs that have been prepared on Microsoft Word." The Opinion concluded: "Counsel who use Word are not entitled to a litigating advantage over those who use WordPerfect." Quite. They deserve our sympathy,

If you  
news  
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though. No wonder Sullivan & Cromwell, Microsoft's lawyers', use WordPerfect: they knew all along that they's have a lot of words to count for the Court of Appeals, and didn't want to look any sillier than necessary. ®

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**\*40074 Federal Rules of Appellate Procedure  
Rule 32, 28 U.S.C.A.**

**UNITED STATES CODE  
ANNOTATED  
FEDERAL RULES OF  
APPELLATE PROCEDURE  
TITLE VII. GENERAL  
PROVISIONS**

*Rules amendments received to 6-19-2000*

**Rule 32. Form of Briefs, Appendices, and  
Other Papers**

**(a) Form of a Brief.**

**(1) Reproduction.**

(A) A brief may be reproduced by any process that yields a clear black image on light paper. The paper must be opaque and unglazed. Only one side of the paper may be used.

(B) Text must be reproduced with a clarity that equals or exceeds the output of a laser printer.

(C) Photographs, illustrations, and tables may be reproduced by any method that results in a good copy of the original; a glossy finish is acceptable if the original is glossy.

(2) Cover. Except for filings by unrepresented parties, the cover of the appellant's brief must be blue; the appellee's, red; an intervenor's or amicus curiae's, green; and any reply brief, gray. The front cover of a brief must contain:

(A) the number of the case centered at the top;

(B) the name of the court;

(C) the title of the case (see Rule 12(a));

(D) the nature of the proceeding (e.g., Appeal, Petition for Review) and the name of the court, agency, or board below;

(E) the title of the brief, identifying the party or parties for whom the brief is filed; and

(F) the name, office address, and telephone number of counsel representing the party for whom the brief is filed.

(3) Binding. The brief must be bound in any manner that is secure, does not obscure the text, and permits the brief to lie reasonably flat when open.

(4) Paper Size, Line Spacing, and Margins. The brief must be on 8 1/2 by 11 inch paper. The text must be double-spaced, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. Margins must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there.

\*40075 (5) Typeface. Either a proportionally spaced or a monospaced face may be used.

(A) A proportionally spaced face must include serifs, but sans-serif type may be used in headings and captions. A proportionally spaced face must be 14-point or larger.

(B) A monospaced face may not contain more than 10 1/2 characters per inch.

(6) Type Styles. A brief must be set in a plain, roman style, although italics or boldface may be used for emphasis. Case names must be italicized or underlined.

**(7) Length.**

(A) Page limitation. A principal brief may not exceed 30 pages, or a reply brief 15 pages, unless it complies with Rule 32(a)(7)(B) and (C).

**(B) Type-volume limitation.**

(i) A principal brief is acceptable if:  
· it contains no more than 14,000 words; or

· it uses a monospaced face and contains no more than 1,300 lines of text.

(ii) A reply brief is acceptable if it contains no more than half of the type volume specified in Rule 32(a)(7)(B)(i).

(iii) Headings, footnotes, and quotations count toward the word and line limitations. The corporate disclosure statement, table of contents, table of citations, statement with respect to oral argument, any addendum containing statutes, rules or regulations, and any certificates of counsel do not count toward the limitation.

(C) Certificate of compliance. A brief submitted under Rule 32(a)(7)(B) must include



a certificate by the attorney, or an unrepresented party, that the brief complies with the type-volume limitation. The person preparing the certificate may rely on the word or line count of the word-processing system used to prepare the brief. The certificate must state either:

- (i) the number of words in the brief;
- or
- (ii) the number of lines of monospaced type in the brief.

(b) Form of an Appendix. An appendix must comply with Rule 32(a)(1), (2), (3), and (4), with the following exceptions:

(1) The cover of a separately bound appendix must be white.

\*40076 (2) An appendix may include a legible photocopy of any document found in the record or of a printed judicial or agency decision.

(3) When necessary to facilitate inclusion of odd-sized documents such as technical drawings, an appendix may be a size other than 8 1/2 by 11 inches, and need not lie reasonably flat when opened.

(c) Form of Other Papers.

(1) Motion. The form of a motion is governed by Rule 27(d).

(2) Other Papers. Any other paper, including a petition for rehearing and a petition for rehearing en banc, and any response to such a petition, must be reproduced in the manner prescribed by Rule 32(a), with the following exceptions:

(A) a cover is not necessary if the caption and signature page of the paper together contain the information required by Rule 32(a)(2); and

(B) Rule 32(a)(7) does not apply.

(d) Local Variation. Every court of appeals must accept documents that comply with the form requirements of this rule. By local rule or order in a particular case a court of appeals may accept documents that do not meet all of the form requirements of this rule.

## CREDIT(S)

### 2000 Electronic Update

*(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)*

<General Materials (GM) - References, Annotations, or Tables>

## HISTORICAL NOTES

### ADVISORY COMMITTEE NOTES

#### 1967 Adoption

Only two methods of printing are now generally recognized by the circuits—standard typographic printing and the offset duplicating process (multilith). A third, mimeographing, is permitted in the Fifth Circuit. The District of Columbia, Ninth, and Tenth Circuits permit records to be reproduced by copying processes. The Committee feels that recent and impending advances in the arts of duplicating and copying warrant experimentation with less costly forms of reproduction than those now generally authorized. The proposed rule permits, in effect, the use of any process other than the carbon copy process which produces a clean, readable page. What constitutes such is left in first instance to the parties and ultimately to the court to determine. The final sentence of the first paragraph of subdivision (a) is added to allow the use of multilith, mimeograph, or other forms of copies of the reporter's original transcript whenever such are available.

#### \*40077 1998 Amendments

In addition to amending Rule 32 to conform to uniform drafting standards, several substantive amendments are made. The Advisory Committee had been working on substantive amendments to Rule 32 for some time prior to completion of this larger project.

Subdivision (a). Form of a Brief.

Paragraph (a)(1). Reproduction.

The rule permits the use of "light" paper, not just "white" paper. Cream and buff colored paper, including recycled paper, are acceptable. The rule permits printing on only one side of the paper. Although some argue that paper could be saved by allowing double-sided printing, others argue that in order to preserve legibility a heavier weight paper would be needed, resulting in little, if any, paper saving. In addition, the blank sides of a brief are commonly used by judges and their clerks for making notes about the case.

Because photocopying is inexpensive and widely available and because use of carbon paper is now very rare, all references to the use of carbon copies have been deleted.

The rule requires that the text be reproduced with a clarity that equals or exceeds the output of a laser printer. That means that the method used must have a print resolution of 300 dots per inch (dpi) or more. This will ensure the legibility of the brief. A brief produced by a typewriter or a daisy wheel printer, as well as one produced by a laser printer, has a print resolution of 300 dpi or more. But a brief

produced by a dot-matrix printer, fax machine, or portable printer that uses head or dye to transfer methods does not. Some ink jet printers are 300 dpi or more, but some are 216 dpi and would not be sufficient.

Photographs, illustrations, and tables may be reproduced by any method that results in a good copy.

#### Paragraph (a)(2). Cover.

The rule requires that the number of the case be centered at the top of the front cover of a brief. This will aid in identification of the brief. The idea was drawn from a local rule. The rule also requires that the title of the brief identify the party or parties on whose behalf the brief is filed. When there are multiple appellants or appellees, the information is necessary to the court. If, however, the brief is filed on behalf of all appellants or appellees, it may so indicate. Further, it may be possible to identify the class of parties on whose behalf the brief is filed. Otherwise, it may be necessary to name each party. The rule also requires that attorneys' telephone numbers appear on the front cover of a brief or appendix.

#### \*40078 Paragraph (a)(3). Binding.

The rule requires a brief to be bound in any manner that is secure, does not obscure the text, and that permits the brief to lie reasonable flat when open. Many judges and most court employees do much of their work at computer keyboards and a brief that lies flat when open is significantly more convenient. One circuit already has such a requirement and another states a preference for it. While a spiral binding would comply with this requirement, it is not intended to be the exclusive method of binding. Stapling a brief at the upper left-hand corner also satisfies this requirement as long as it is sufficiently secure.

#### Paragraph (a)(4). Paper Size, Line Spacing, and Margins.

The provisions for pamphlet-size briefs are deleted because their use is so rare. If a circuit wishes to authorize their use, it has authority to do so under subdivision (d) of this rule.

#### Paragraph (a)(5). Typeface.

This paragraph and the next one, governing type style, are new. The existing rule simply states that a brief produced by the standard typographic process must be printed in at least 11 point type, or if produced in any other manner, the lines of text must be double spaced. Today few briefs are produced by commercial printers or by typewriters; most are produced on and printed by computer. The availability of computer fonts in a variety of sizes and styles has given rise to local rules limiting type styles. The Advisory Committee believes that some standards are needed both to ensure that all litigants have an equal opportunity to present their material and to ensure that the briefs are easily legible.

With regard to typeface there are two options;

proportionally-spaced typeface or monospaced typeface.

A proportionally-spaced typeface gives a different amount of horizontal space to characters depending upon the width of the character. A capital "M" is given more horizontal space than a lower case "i". The rule requires that a proportionally-spaced typeface have serifs. Serifs are small horizontal or vertical strokes at the ends of the lines that make up the letters and numbers. Studies have shown that long passages of serif type are easier to read and comprehend than long passages of sans-serif type. The rule accordingly limits the principal sections of submissions to serif type although sans-serif type may be used in headings and captions. This is the same approach magazines, newspapers, and commercial printers take. Look at a professionally printed brief; you will find sans-serif type confined to captions, if it is used at all. The next line shows two characters enlarged for detail. The first has serifs, the second does not.

\*40079 Y Y \*

[\* For original representation of characters, see House Document 105-269 of the 105th Congress, 2d Session dated May 11, 1998 entitled "Amendments to the Federal Rules of Appellate Procedure .... (Executive Communication No. 9072)."]

So that the type is easily legible, the rule requires a minimum type size of 14 points for proportionally-spaced typeface.

A monospaced typeface is one in which all characters have the same advance width. That means that each character is given the same horizontal space on the line. A wide letter such as a capital "M" and a narrow letter such as a lower case "i" are given the same space. Most typewriters produce mono-spaced type, and most computers also can do so using fonts with names such as "Courier."

This sentence is in a proportionally spaced font; as you can see, the m and i have different widths. \*

[\* For original representation of characters, see House Document 105-269 of the 105th Congress, 2d Session dated May 11, 1998 entitled "Amendments to the Federal Rules of Appellate Procedure .... (Executive Communication No. 9072)."]

This sentence is in a monospaced font; as you can see, the m and i have the same width. \*

[\* For original representation of characters, see House Document 105-269 of the 105th Congress, 2d Session dated May 11, 1998 entitled "Amendments to the Federal Rules of Appellate Procedure .... (Executive Communication No. 9072)."]

The rule requires use of a monospaced typeface that produces no more than 10 1/2 characters per inch. A standard typewriter with pica type produces a monospaced typeface with 10 characters per inch (cpi). That is the ideal monospaced typeface. The rule permits up to 10 1/2 cpi because some computer software programs contain monospaced fonts that purport to produce 10 cpi but that in

fact produce slightly more than 10 cpi. In order to avoid the need to reprint a brief produced in good faith reliance upon such a program, the rule permits a bit of leeway. A monospaced typeface with no more than 10 cpi is preferred.

Paragraph (a)(6). Type Styles.

\*40080 The rule requires use of plain roman, that is not italic or script, type. Italics and boldface may be used for emphasis. Italicizing case names is preferred but underlining may be used.

Paragraph (a)(7). Type-Volume Limitation.

Subparagraph (a)(7)(A) contains a safe-harbor provision. A principal brief that does not exceed 30 pages complies with the type-volume limitation without further question or certification. A reply brief that does not exceed 15 pages is similarly treated. The current limit is 50 pages but that limit was established when most briefs were produced on typewriters. The widespread use of personal computers has made a multitude of printing options available to practitioners. Use of a proportional typeface alone can greatly increase the amount of material per page as compared with use of a monospaced typeface. Even though the rule requires use of 14-point proportional type, there is great variation in the x-height of different 14-point typefaces. Selection of a typeface with a small x-height increases the amount of text per page. Computers also make possible fine gradations in spacing between lines and tight tracking between letters and words. All of this, and more, have made the 50-page limit virtually meaningless. Establishing a safe-harbor of 50 pages would permit a person who makes use of the multitude of printing "tricks" available with most personal computers to file a brief far longer than the "old" 50-page brief. Therefore, as to those briefs not subject to any other volume control than a page limit, a 30-page limit is imposed.

The limits in subparagraph (B) approximate the current 50-page limit and compliance with them is easy even for a person without a personal computer. The aim of these provisions is to create a level playing field. The rule gives every party an equal opportunity to make arguments, without permitting those with the best in-house typesetting an opportunity to expand their submissions.

The length can be determined either by counting words or lines. That is, the length of a brief is determined not by the number of pages but by the number of words or lines in the brief. This gives every party the same opportunity to present an argument without regard to the typeface used and eliminates any incentive to use footnotes or typographical "tricks" to squeeze more material onto a page.

The word counting method can be used with any typeface.

\*40081 A monospaced brief can meet the volume limitation by using the word or a line count. If the line counting method is used, the number of lines may not exceed 1,300–26 lines per page in a 50-page brief. The number of lines is easily counted manually. Line counting is not sufficient if a

proportionally spaced typeface is used, because the amount of material per line can vary widely.

A brief using the type-volume limitations in subparagraph (B) must include a certificate by the attorney, or party proceeding pro se, that the brief complies with the limitation. The rule permits the person preparing the certification to rely upon the word or line count of the word-processing system used to prepare the brief.

Currently, Rule 28(g) governs the length of a brief. Rule 28(g) begins with the words "[e]xcept by permission of the court," signaling that a party may file a motion to exceed the limits established in the rule. The absence of similar language in Rule 32 does not mean that the Advisory Committee intends to prohibit motions to deviate from the requirements of the rule. The Advisory Committee does not believe that any such language is needed to authorize such a motion.

Subdivision (b). Form of an Appendix.

The provisions governing the form of a brief generally apply to an appendix. The rule recognizes, however, that an appendix is usually produced by photocopying existing documents. The rule requires that the photocopies be legible.

The rule permits inclusion not only of documents from the record but also copies of a printed judicial or agency decision. If a decision that is part of the record in the case has been published, it is helpful to provide a copy of the published decision in place of a copy of the decision from the record.

Subdivision (c). Form of Other Papers.

The old rule required a petition for rehearing to be produced in the same manner as a brief or appendix. The new rule also requires that a petition for rehearing en banc and a response to either a petition for panel rehearing or a petition for rehearing en banc be prepared in the same manner. But the length limitations of paragraph (a)(7) do not apply to those documents and a cover is not required if all the information needed by the court to properly identify the document and the parties is included in the caption or signature page.

Existing subdivision (b) states that other papers may be produced in like manner, or "they may be typewritten upon opaque, unglazed paper 8 1/2 by 11 inches in size." The quoted language is deleted but that method of preparing documents is not eliminated because (a)(5)(b) permits use of standard pica type. The only change is that the new rule now specifies margins for typewritten documents.

\*40082 Subdivision (d). Local Variation.

A brief that complies with the national rule should be acceptable in every court. Local rules may move in one direction only; they may authorize noncompliance with certain of the national norms. For example, a court that wishes to do so may authorize printing of briefs on both sides of the paper, or the use of smaller type size or sans-serif

proportional type. A local rules may not, however, impose requirements that are not in the national rule.

## REFERENCES

### CROSS REFERENCES

Typewritten briefs, appendices, and other papers allowed in forma pauperis, see Federal Rules of Appellate Procedure Rule 24, 28 USCA.

### LIBRARY REFERENCES

American Digest System

Form of briefs, appendix and other papers, see Federal Courts ¶ 691 to 716.

Encyclopedias

Form of briefs, appendix and other papers, see C.J.S. Federal Courts §§ 295(12), 296(14).

Forms

Cover for brief, see West's Federal Forms § 796 and Comment thereunder.

Cover of brief, see West's Federal Forms § 796.

2 Federal Procedural Forms L Ed, Appeal, Certiorari, and Review §§ 3:52, 3:53, 3:112, 3:113, 3:257, 3:483, 3:489, 3:490, 3:492-3:495, 3:505, 3:507, 3:513, 3:528, 3:593

2 Fed Procedural Forms L Ed, Appeal, Certiorari, and Review §§ 3:174, 674, 715, 716, 722, 729, 743, 751-753, 774, 942

16 Federal Procedural Forms L Ed, Trade Regulations and Unfair Trade Practices § 65:54

Law Review and Journal Commentaries

Federal rehearing and certiorari practice. Dennis J.C. Owens, 44 J.Mo.B. 495 (1988).

Texts and Treatises

Form of briefs, etc., see Wright, Miller, Cooper & Gressman, Federal Practice and Procedure: Jurisdiction § 3978.

Appeal, Certiorari, and Review, Fed Proc, L Ed, §§ 3:549, 3:556, 3:573-3:576, 3:740

2A Fed Proc L Ed, Appeal, Certiorari, and Review (1994) §§ 3:604, 611, 630-633, 639, 835, 836

\*40083 Bankruptcy, Fed Proc, L Ed, §§ 9:772, 9:782

## ANNOTATIONS

### NOTES OF DECISIONS

#### Costs 4

#### Financial hardship 3

#### Standard typographic printing 1

#### Typewritten briefs 2

##### 1. Standard typographic printing

Litigant could not be faulted for using standard typographic printing for reproducing parts of record in joint appendix, an approved method of reproducing. *Oliver v. Michigan State Bd. of Ed.*, C.A.6 (Mich.) 1975, 519 F.2d 619.

##### 2. Typewritten briefs

Failure to comply with rule governing form of appellate briefs warranted imposition of sanction on appellant's counsel, where lines in appellant's opening brief were not double-spaced, but rather spaced only one-and-one-half spaces apart, and footnotes in both opening and reply brief violated rule. *Kano v. National Consumer Co-op. Bank*, C.A.9 1994, 22 F.3d 899.

Where good cause appeared, movant's motion to proceed on typewritten briefs on appeal in habeas corpus proceeding was granted. *Fleish v. Swope*, C.A.9 1955, 221 F.2d 558.

##### 3. Financial hardship

Relief from requirement of printing appendix is freely granted those financially burdened by fulfilling requirements of printing. *Arnold Productions, Inc. v. Favorite Films Corp.*, C.A.2 (N.Y.) 1961, 291 F.2d 94.

##### 4. Costs

Assessment of double costs against appellants was appropriate where appellants filed overly long brief, although brief was less than 50 pages, it was not double spaced as required and thus was effectively considerably longer than regulatory requirement, and despite extra length, it failed to adequately present claims or clearly identify claims being appealed. *Doyle v. Hasbro, Inc.*, C.A.1 (Mass.) 1996, 103 F.3d 186.

Where brief of the appellees was not in conformity with former court rule as to form, the appellees would be denied recovery of their costs on appeal. *Utility Service Corp. v. Hillman Transp. Co.*, C.A.3 (Pa.) 1957, 244 F.2d 121.